

HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

AGATA DROZDZ, an individual, and
TEAKRE VEST, an individual

Plaintiffs,

v.

USAA GENERAL INDEMNITY
COMPANY, UNITED SERVICES
AUTOMOBILE ASSOCIATION and
USAA CASUALTY INSURANCE
COMPANY,

Defendants.

No. 2:20-cv-01010-JCC

~~[PROPOSED]~~ FIRST AMENDED
STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

1 confidential treatment under the applicable legal principles, and it does not presumptively
2 entitle parties to file confidential information under seal.

3 **2. “CONFIDENTIAL” MATERIAL**

4 “Confidential” material shall include, based on meet-and-confer discussions among
5 the parties’ counsel to date, the following documents and categories of documents that have
6 been, or may be, produced or otherwise exchanged in connection with this case by the parties
7 or by non-parties: personally identifiable private information of the Defendants’ insureds
8 (e.g., names, addresses, phone numbers e-mail addresses, social security numbers, tax
9 identification numbers, member numbers, protected health information, etc.); Defendant’s
10 written contracts or agreements with third-party service providers, including specifically any
11 written contracts or agreements with Auto Injury Solutions (AIS); internal KDs (“Knowledge
12 Delivery”) or KCs (“Knowledge Central”), training, and other internal documents which
13 contain confidential, proprietary information concerning Defendants’ claims handling
14 procedures, developed over time, at significant investment and expense; and documents and
15 information of non-parties produced in this case that are subject to a contractual
16 confidentiality agreement. If subsequent discovery implicates additional documents or
17 categories of documents warranting confidentiality protection, then the parties’ counsel will
18 meet and confer in good faith and, if necessary and appropriate, jointly request entry of an
19 order supplementing this Stipulated Protective Order.

20 **3. SCOPE**

21 The protections conferred by this agreement cover not only confidential material (as
22 defined above), but also (1) any information copied or extracted from confidential material;
23 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
24 testimony, conversations, or presentations by parties or their counsel that might reveal
25 confidential material. However, the protections conferred by this agreement do not cover

1 information that is in the public domain or becomes part of the public domain through trial or
2 otherwise. Each party reserves the right to challenge the designation of confidential
3 information, as set forth below in Section 6.

4 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

5 4.1 Basic Principles. A receiving party may use confidential material that is
6 disclosed or produced by another party or by a non-party in connection with this case only for
7 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
8 disclosed only to the categories of persons and under the conditions described in this
9 agreement. Confidential material must be stored and maintained by a receiving party at a
10 location and in a secure manner that ensures that access is limited to the persons authorized
11 under this agreement.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving party may
14 disclose any confidential material only to:

- 15 (a) the receiving party’s counsel of record in this action, as well as employees of
16 counsel to whom it is reasonably necessary to disclose the information for this
17 litigation;
- 18 (b) the officers, directors, and employees (including in house counsel) of the
19 receiving party to whom disclosure is reasonably necessary for this litigation,
20 unless the parties agree that a particular document or material produced is for
21 Attorney’s Eyes Only and is so designated;
- 22 (c) experts and consultants to whom disclosure is reasonably necessary for this
23 litigation and who have signed the “Acknowledgment and Agreement to Be
24 Bound” (Exhibit A);
- 25 (d) the court, court personnel, and court reporters and their staff;

- 1 (e) copy or imaging services retained by counsel to assist in the duplication of
2 confidential material, provided that counsel for the party retaining the copy or
3 imaging service instructs the service not to disclose any confidential material
4 to third parties and to immediately return all originals and copies of any
5 confidential material;
- 6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
9 designating party or ordered by the court. Pages of transcribed deposition
10 testimony or exhibits to depositions that reveal confidential material must be
11 separately bound by the court reporter and may not be disclosed to anyone
12 except as permitted under this agreement;
- 13 (g) the author or recipient of a document containing the information or a custodian
14 or other person who otherwise possessed or knew the information.

15 4.3 Filing Confidential Material. Before filing confidential material or discussing
16 or referencing such material in court filings, the filing party shall confer with the designating
17 party in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
18 party will remove the confidential designation, whether the document can be redacted, or
19 whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule
20 5(g) sets forth the procedures that must be followed and the standards that will be applied
21 when a party seeks permission from the court to file material under seal. In the event that a
22 party who wishes to include confidential material in a court filing has contacted opposing
23 counsel a reasonable amount of time before the filing in an effort to meet and confer, but no
24 meet and confer has occurred, then the filing party shall file the confidential material under
25

1 seal pursuant to Local Civil Rule 5(g)(2) and the parties shall promptly confer consistent with
2 the requirements of Local Civil Rule 5(g) prior to the noting date of the motion to seal.

3 4.4 Nothing in this Protective Order is to be construed or used as a waiver of any
4 rights, procedural or evidentiary objections, or privileges under either the applicable Rules of
5 Civil Procedure or the Rules of Evidence.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 party or non-party that designates information or items for protection under this agreement
9 must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards. The designating party must designate for protection only those parts of
11 material, documents, items, or oral or written communications that qualify, so that other
12 portions of the material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
16 unnecessarily encumber or delay the case development process or to impose unnecessary
17 expenses and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it
19 designated for protection do not qualify for protection, the designating party must promptly
20 notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
23 ordered, disclosure or discovery material that qualifies for protection under this agreement
24 must be clearly so designated before or when the material is disclosed or produced.
25

- 1 (a) Information in documentary form: (e.g., paper or electronic documents and
2 deposition exhibits, but excluding transcripts of depositions or other pretrial or
3 trial proceedings), the designating party must affix the word
4 “CONFIDENTIAL” to each page that contains confidential material. If only a
5 portion or portions of the material on a page qualifies for protection, the
6 producing party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins).
- 8 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
9 any participating non-parties must identify on the record, during the deposition
10 or other pretrial proceeding, all protected testimony, without prejudice to their
11 right to so designate other testimony after reviewing the transcript. Any party
12 or non-party may, within fifteen days after receiving the transcript of the
13 deposition or other pretrial proceeding, designate portions of the transcript, or
14 exhibits thereto, as confidential. If a party or non-party desires to protect
15 confidential information at trial, the issue should be addressed during the pre-
16 trial conference.
- 17 (c) Other tangible items: the producing party must affix in a prominent place on
18 the exterior of the container or containers in which the information or item is
19 stored the word “CONFIDENTIAL.” If only a portion or portions of the
20 information or item warrant protection, the producing party, to the extent
21 practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the designating
24 party’s right to secure protection under this agreement for such material. Upon timely
25

1 correction of a designation, the receiving party must make reasonable efforts to ensure that the
2 material is treated in accordance with the provisions of this agreement.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion
13 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
14 conference with other affected parties in an effort to resolve the dispute without court action.
15 The certification must list the date, manner, and participants to the conference. A good faith
16 effort to confer requires a face-to-face meeting, correspondence (which may be via email), or
17 a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
19 intervention, the designating party may file and serve a motion to retain confidentiality under
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
21 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
22 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
23 burdens on other parties) may expose the challenging party to sanctions. All parties shall
24 continue to maintain the material in question as confidential until the court rules on the
25 challenge.

1 **7. HIPAA PROTECTED HEALTH INFORMATION**

2 7.1 The parties recognize the need to provide for the expeditious and secure
3 transfer of “protected health information” (also referred to herein as “PHI”) to other parties
4 and to their representatives in connection with this litigation and further recognize the need to
5 provide for the continued confidentiality of PHI. To achieve these goals, the parties to the
6 above-referenced action and their attorneys are hereby authorized and agree to receive,
7 subpoena and transmit PHI pertaining to individuals who receive medical treatment that is the
8 subject of claims made under Personal Injury Protection coverage issued by the defendants in
9 this action, to the extent and subject to the conditions outlined herein.

10 7.2 For the purposes of this Protective Order, PHI shall have the same scope and
11 definition as set forth in 45 C.F.R. § 160.103 and 164.501. PHI includes, but is not limited to,
12 health information, including demographic information, relating to either (a) the past, present,
13 or future physical or mental condition of an individual, (b) the provision of care to an
14 individual, or (c) the payment for care provided to an individual, which identifies the
15 individual or which reasonably could be expected to identify the individual.

16 7.3. All “covered entities” (as defined by 45 C.F.R. § 160.103) are hereby
17 authorized to disclose the PHI described in Paragraph 1 to attorneys representing the parties in
18 the above-captioned litigation.

19 7.4. The parties and their attorneys shall be permitted to use or disclose the
20 documents disclosing PHI for purposes of prosecuting or defending this action including any
21 appeals of this case. This includes, but is not necessarily limited to, disclosure to the parties,
22 their attorneys, experts, consultants, court personnel, court reporters, copy services, trial
23 consultants, and other entities or persons involved in this litigation.

24 7.5. Prior to disclosing PHI to persons involved in this litigation, counsel shall
25 inform each such person that PHI may not be used or disclosed for any purpose other than this

1 litigation. Counsel shall take all other reasonable steps to ensure that persons receiving PHI do
2 not use or disclose such information for any purpose other than this litigation. Counsel agree
3 not to use or disclose the PHI disclosed in this lawsuit for any other purpose or in any other
4 proceeding other than this litigation.

5 7.6. Within 45 days after the conclusion of the litigation including appeals, the
6 parties, their attorneys, and any person or entity in possession of PHI received from counsel
7 pursuant to paragraph four of this Protective Order, or obtained from covered entity at any
8 time, shall return PHI to the covered entity or destroy any and all copies of PHI, except that
9 counsel are not required to secure the return or destruction of PHI submitted to the Court.
10 Upon request, the party receiving PHI agrees to certify in writing its compliance with this
11 section 7.6.

12 7.7. This Protective Order does not control or limit the use of PHI that comes into
13 the possession of the parties or their attorneys from a source other than a “covered entity,” as
14 that term is defined in 45 C.F.R. § 160.103.

15 7.8. Nothing in this Protective Order authorizes counsel for either party to obtain
16 medical records or information through means other than formal discovery requests,
17 subpoenas, depositions, pursuant to a patient authorization, or other lawful process.

18 7.9. Documents disclosing PHI shall be designated “CONFIDENTIAL” consistent
19 with section 5.2(a). PHI produced in the litigation shall be filed under seal. Section 4.3 of
20 this Protective Order shall govern the filing of PHI under seal.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a party is served with a subpoena or a court order issued in other litigation that
24 compels disclosure of any information or items designated in this action as
25 “CONFIDENTIAL,” that party must:

- 1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;
- 3 (b) promptly notify in writing the party who caused the subpoena or order to issue
4 in the other litigation that some or all of the material covered by the subpoena
5 or order is subject to this agreement. Such notification shall include a copy of
6 this agreement; and
- 7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 designating party whose confidential material may be affected.

9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
11 confidential material to any person or in any circumstance not authorized under this
12 agreement, the receiving party must immediately (a) notify in writing the designating party of
13 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
14 protected material, (c) inform the person or persons to whom unauthorized disclosures were
15 made of all the terms of this agreement, and (d) request that such person or persons execute
16 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

17 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
18 **PROTECTED MATERIAL**

19 When a producing party gives notice to receiving parties that certain inadvertently
20 produced material is subject to a claim of privilege or other protection, the obligations of the
21 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
22 provision is not intended to modify whatever procedure may be established in an e-discovery
23 order or agreement that provides for production without prior privilege review. The parties
24 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
25

1 **11. NON TERMINATION AND RETURN OF DOCUMENTS**

2 Within 60 days after the termination of this action, including all appeals, each
3 receiving party must return all confidential material to the producing party, including all
4 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
5 methods of destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
7 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
9 work product, even if such materials contain confidential material.

10 The confidentiality obligations imposed by this agreement shall remain in effect until
11 a designating party agrees otherwise in writing or a court orders otherwise.

12
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED this 17th day of June, 2021.

1 By: s/ Young-Ji Ham

2 Young-Ji Ham, WSBA #46421

3 WASHINGTON INJURY LAWYERS PLLC

4 1700 7th Avenue, Suite 2100

5 Seattle, WA 98101

6 Tel: (425) 312-3057

7 youngji@washinjurylaw.com

8 Attorneys for Plaintiffs

CORR CRONIN LLP

By: s/ Victoria E. Ainsworth

Michael A. Moore, WSBA No. 27047

Victoria E. Ainsworth, WSBA No. 49677

1001 Fourth Avenue, Suite 3900

Seattle, WA 98154-1051

Tel: (206) 625-8600

Fax: (206) 625-0900

mmoore@corrchronin.com

tainsworth@corrchronin.com

Jay Williams (*pro hac vice*)

Paula M. Ketcham (*pro hac vice*)

SCHIFF HARDIN LLP

233 South Wacker Drive, Suite 7100

Chicago, IL 60606

Tel: (312) 258-5500

Fax: (312) 258-5600

jwilliams@schiffhardin.com

pketcham@schiffhardin.com

Attorneys for Defendants

14 PURSUANT TO STIPULATION, IT IS SO ORDERED. This 21st day of June 2021.

16 

18 John C. Coughenour

19 UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under
6 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
7 Order that was issued by the United States District Court for the Western District of
8 Washington on _____ [date] in the case of *Drozdz and Vest v. USAA General*
9 *Indemnity Company et al.*, Case No. 2:20-cv-01010-JCC (W.D. Wash.). I agree to comply
10 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in the
12 nature of contempt. I solemnly promise that I will not disclose in any manner any information
13 or item that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Western District of Washington for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____
22
23
24
25